IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 413 of 2006
In
COMPANY APPLICATION No. 334 of 2004
In
COMPANY PETITION No. 152 of 1995
With
COMPANY APPLICATION No. 453 of 2006
In
COMPANY PETITION No. 152 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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I.F.C.I. LTD. - Applicant(s)
Versus
O.L.OF MAYO HOSPITALS LTD. & 3 - Respondent(s)

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Appearance :
MR BHARAT JANI for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
DELETED for Respondent(s) : 3,
MR RM DESAI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/09/2006

ORAL JUDGMENT

Company Application No.413 of 2006 is filed by the IFCI Limited being Chairman of the Assets Sale Committee to consider the report and the offer of highest bidder i.e. Metro Hospitals and Heart Institution for purchasing the property of the Mayo Hospitals Limited (company in liquidation) for Rs.1350 lacs. A further prayer is also made to permit IFCI to take out from the sale proceeds, costs, charges and expenses incurred/to be incurred by the IFCI and appropriate the same to itself from out of sale proceeds, when realized, in the first instance before distribution to other secured creditors.

2. Company Application No.453 of 2006 is filed by one Forties Health Care Limited requesting to consider to accept the offer to purchase the assets of the company in liquidation, more particularly described as “Composite Lot comprising Lot A & B” for an aggregate price of Rs.1485 lacs.

3. By order dated 16-2-1999, this Court passed an order in Company Petition No.152 of 1995 with Company Petition No.181 of 1998 opining that it is a fit case to wind up

Mayo Hospitals Limited and accordingly the order was passed appointing Official Liquidator as a provisional liquidator with rider that the Managing Director of the company, Ms Dwipa Mankodi would function as the Agent of the Official Liquidator and Official Liquidator will proceed and have the inventory done, as also the valuation of the property. By order dated 8-5-2002, this Court directed the Official Liquidator to take possession of all the assets and properties of the company and prepare a fresh inventory and place the same on record. By order dated 11-2-2004 passed in Company Petition No.152 of 1995 (with Company Petition No.82 of 1998 with Company Petition No.104 of 1998 with Company Petition No.181 of 1998), this Court passed an order to wind up affairs of Mayo Hospitals Limited (earlier called as GIL Hospitals Limited) and the liquidator attached to this Court was appointed as Official Liquidator of the company in liquidation with all powers to take charge of the assets of the properties of the company in liquidation. It further appears that on an application by the applicant IFCI Limited, this Court vide order dated 19-10-2004 issued direction for constitution of Assets Sale Committee (hereinafter referred to as “the ASC”) under the Chairmanship of IFCI (OL, IDBI, ICICI and Dena Bank

as members along with a representative of workers' union, if any)for sale of assets of company in liquidation and also directed that the ASC shall undertake preliminary process for putting the property of company in liquidation for sale. It appears that valuation of the assets was carried out and the Valuer estimated the entire assets of the company in liquidation at Rs.1753.44 lacs. Tenders were invited by giving public advertisement in local newspaper for sale of assets of the company in liquidation. Offers invited by giving earlier advertisement, were rejected and it was decided to release fresh advertisement in the newspaper on 8-7-2005. Accordingly, offers were invited. On the last attempts being made, the ASC received in all six offers and all the offers received were open before the ASC on 29th June, 2006 and *inter se* bidding was held. In the said meeting, one Metro Hospitals and Heart Institution, Noida/ Raj Madan came out with highest offer of Rs.1300 lacs and the second highest offer of M/s Moon Beverages Limited at Rs.926 lacs. Thereafter, it was decided to conduct *inter se* bidding and in the *inter se* bidding, M/s Moon Beverages Limited raised its offer from 926 lacs to Rs.1310 lacs, RCFL from Rs.850 lacs to Rs.1330 lacs and Metro Hospitals Limited raised its offer from 1300 lacs

to Rs.1350 lacs for Composite Lot and in the absence of any higher offer, Metro Hospitals became the highest offerer. As per ASC and the applicant herein, the offer of Metro Hospitals of Rs.1350 lacs was reasonable and therefore, it was decided by the ASC to retain the earnest money of Metro Hospitals and return the EMD to other bidders and thereafter the present Judges summons have been taken out to consider the offer of Metro Hospitals and Heart Institute of Noida to purchase the composite lot of the assets of the company in liquidation for Rs.1350 lacs. In the meantime, one Forties Health Care Limited came out with a case that they are ready and willing to purchase the Composite Lot comprising Lot A & B for an aggregate price of Rs.1485 lacs which is 135 lacs more than the offer of Metro Hospitals and therefore, they moved Company Application No.453 of 2006. By order dated 23-8-2006, they were directed to deposit the EMD and late fee charges and accordingly the Forties Health Care Limited deposited EMD of Rs.1,20,000,00/- and also deposited late fee charges.

4. Both these company applications came up for hearing before this Court on 19th September, 2006 and in view of the fact that the Forties Health Care Limited have

offered to purchase the composite lot at Rs.1485 lacs, it was decided to consider their offer and the learned counsel appearing for Metro Hospitals appearing through Shri Kamal Trivedi, learned senior counsel appearing with Ms Amee Yagnik have submitted that Metro Hospitals is ready and willing to match the price offered by Forties Health Care Limited and therefore, it was decided to have re-bidding *inter se* between Metro Hospitals and Forties Health Care Limited and accordingly re-bidding has taken place before the Court. The Forties Health Care Limited raised their offer upto 2410 lacs and Metro Hospitals raised their offer upto 2420 lacs. Shri Navin Pahwa, learned advocate appearing for Forties Health Care Limited has submitted their inability to bid for more than Rs.2410 lacs and accordingly Metro Hospitals is found to be the highest offerer who has offered to purchase Composite Lot, comprising Lot A & B of company in liquidation for an amount of Rs.2420 lacs. Considering the fact that the valuation as per the valuation report was Rs.1753.44 lacs and considering the offer of Metro Hospitals at Rs.2420 lacs, this Court is of the opinion that the offer of Metro Hospitals, Noida to purchase Composite Lot, comprising Lot A & B for an amount of Rs.2420 lacs is reasonable and the said offer is to be

accepted and accordingly the offer of Metro Hospitals and Heart Institute, Noida/Raj Madan to purchase the Composite Lot, comprising Lot A & B for an amount of Rs.2420 crores is accepted on the following terms and conditions;

i. The sale of the assets is on “as is where is and whatever there is” basis.

ii. Purchaser shall pay 25% of the purchase price within a period of 30 days from today and the balance amount of purchase price shall be deposited/paid by the purchaser within a period of three months thereafter.

iii. In the event, the purchaser fails to deposit the sale consideration as provided hereinabove or fails to perform any of the terms and conditions as stated in the terms and conditions of sale/tender notice, the deposited amount shall be forfeited and the property will be resold at the cost of the defaulting purchaser and the deficiency in the sale price, if any, occasioned by such resale and the cost thereof shall be made good by the defaulter purchaser with interest on the amount of deficiency from the expiry of 30 days from the date of the

confirmation of the sale till payment and in case of non payment of such sum, either in part or whole, the same shall be recoverable by the Court from the defaulting purchaser as and by way of liquidated damages; while any profit on such resale shall not belong to such defaulting purchaser.

iv. Upon payment of entire sale consideration amount, the purchaser shall at his own expense, take such steps as may be necessary for the purpose of obtaining delivery/possession of the property.

v. On payment of full sale consideration, the Official Liquidator to execute a proper conveyance/ sale deed in favour of purchasing party and IFCI to sign as confirming party.

vi. All the expenses for the conveyance deed including stamp duty, registration fee and the costs of pursuing and approving the draft conveyance on behalf of various parties and all correspondence in reference thereto, shall be borne by the purchaser.

vii. The property tax, land revenue, lease rent, other municipal taxes, accrued and any other dues payable till date, shall be borne and paid by the purchaser.

viii. The purchaser to comply with all the terms and

condition of sale as mentioned in the tender notice over and above the condition as stated hereinabove.

5. It is understood between the parties that there is some dispute with regard to 13 equipments which is under stay of the Customs Department for which Company Application No.172 of 2005 is pending and therefore, it has been agreed by the purchaser that so far as the possession and sale of the said 13 equipments, the same will be subject to the order that may be passed by this Court in Company Application No.172 of 2005 and the purchaser will not be entitled to the possession of those 13 equipments as on today. However, if the decision is against the Customs Department, in that case, the purchaser will be entitled to the possession of the aforesaid 13 equipments for which Company Application No.172 of 2005 is filed.

6. So far as another prayer of the applicant of Company Application No.413 of 2006 with regard to the expenses incurred by the IFCI is concerned, according to the applicant, an aggregated amount of Rs.21,96,756/- has been spent by the IFCI towards insurance, valuation, advertisement issued for ASC towards payment to security

agency and towards travelling expenses in connection with valuation/taking inventory of assets and therefore, it is directed that the said amount be set apart by the Official Liquidator and as and when amount, realized by the Official Liquidator, is realized and it is disbursed, the said amount be paid to the IFCI out of sale proceeds in the first instance and before distribution to other secured creditors.

7. With these, both these applications are disposed off. No costs.

(M.R.SHAH,J.)

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